United States Court of Appeals

for the Second Circuit

APPELLEE'S BRIEF

75-7394

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P/S

In The

United States Court of Appeals

For the Second Circuit

JOSEPH A. SAN FILIPPO, as President of Local No. 72, United Brotherhood of Carpenters and Joiners of America, and ROBERT S. MURPHY, as Secretary of Local No. 72, United Brotherhood of Carpenters and Joiners of America, and LOCAL NO. 72, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Plaintiffs-Appellants

vs.

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Defendant-Appellee

BRIEF OF APPELLEE-APPELLANT

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STATUTES INVOLVED

Sec. 301 (a), Labor Management Relations Act of 1947 (29 U.S.C. Sec. 185 (a))

Sec. 185. Suits by and against labor organizations:

(a) Venue, amount and citizenship. Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act, or between any such labor organizations, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

Sec. 3 (h), Labor Management Reporting & Disclosure Act of 1959 (29 U.S.C. Sec. 402 (h))

(h) "Trusteeship" means any receivership, trusteeship, or other method of supervision or control whereby a labor organization suspends the autonomy otherwise available to a subordinate body under its constitution or bylaws.

Section 501 (a), Labor Management Reporting & Disclosure Act of 1959 (29 U.S.C. Sec. 501 (a))

501. Fiduciary responsibility of officers of labor organizations. --

(a) The officers, agents, shop stewards, and other representatives of a labor organization occupy positions of trust in relation to such organization and its members as a group. It is, therefore, the duty of each such person, taking into account the special problems and functions of a labor organization, to hold its money and property solely for the benefit of the organization and its members and to manage, invest, and expend the same in accordance with its constitution and bylaws and any resolutions of the governing bodies adopted thereunder, to refrain from dealing with such organization as an adverse party or in behalf of an adverse party in any matter connected with his duties and from holding or acquiring any pecuniary or personal interest which conflicts with the interests of such organization, and to account to the organization for any profit received by him in whatever capacity in connection with transactions conducted by him or under his direction on behalf of the organization. A general exculpatory provision in the constitution and bylaws of such a labor organization or a general exculpatory resolution of a governing body purporting to relieve any such person of liability for breach of the duties declared by this section shall be void as against public policy.

Section 501 (b) Labor Management Reporting & Disclosure Act of 1959 (29 U.S.C. Sec. 501 (b)

(b) When any officer, agent, shop steward, or representative of any labor organization is alleged to have violated the duties declared in subsection (a) and the labor organization or its governing board or officers refuse or fail to sue or recover damages or secure an accounting or other appropriate relief within a reasonable time after being requested to do so by any member of the labor organization, such member may sue such officer, agent, shop steward or representative in any district court of the United States or in any State court of competent jurisdiction to recover damages or secure an accounting or other appropriate relief for the benefit of the labor organization. No such proceeding shall be brought except upon leave of the court obtained upon verified application and for good cause shown, which application may be made ex parte. The trial judge may allot a reasonable part of the recovery in any action under this subsection to pay the fees of counsel prosecuting the suit at the instance of the member of the labor organization and to compensate such member for any expenses necessarily paid or incurred by him in connection with the litigation.

Sec. 101 (a) (1), Labor Management Reporting & Disclosure Act of 1959 (29 U.S.C. Sec. 411 (a) (1))

411. Bill of rights. -- (a) (1) Equal rights. -- Every member of a labor organization shall have equal rights and privileges within such organization to nominate candidates, to vote in elections or referendums of the labor organization, to attend membership meetings, and to participate in the deliberations and voting upon the business of such meetings, subject to reasonable rules and regulations in such organization's constitution and bylaws.

Sec. 101 (a) (5), Labor Management Reporting & Disclosure Act of 1959 (29 U.S.C. Sec. 411 (a) (5)

(5) Safeguards against improper disciplinary action. -- No member of any labor organization may be fined, suspended, expelled, or otherwise disciplined except for nonpayment of dues by such organization or by any officer thereof unless such member has been (a) served with written specific charges; (b) given a reasonable time to prepare his defense; (c) afforded a full and fair hearing.

Sec. 609, Labor Management Reporting & Disclosure Act of 1959 (29 U.S.C. Sec. 529)

529. Prohibition on certain discipline by labor organi-

tion. -- It shall be unlawful for any labor organization, or any officer, agent, shop steward, or other representative of a labor organization, or any employee thereof to fine, suspend, expel, or otherwise discipline any of its members for exercising any right to which he is entitled under the provisions of this Act. The provisions of section 102 (Sec. 412 of this title) shall be applicable in the enforcement of this section.

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

75-7394

* *

JOSEPH A. SAN FILIPPO, as President of Local No. 72, United Brotherhood of Carpenters and Joiners of America, and ROBERT S. MURPHY, as Secretary of Local No. 72, United Brotherhood of Carpenters and Joiners of America, and LOCAL NO. 72, UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Plaintiffs-Appellants

-vs-

UNITED BROTHERHOOD OF CARPENTERS AND JOINERS OF AMERICA,

Defendant-Appellee

* *

- BRIEF OF APPELLEE-APPELLANT -

Preliminary Statement

Appellants Local No. 72, United Brotherhood of Carpenters and Joiners of America, hereinafter Local 72, have taken an appeal from so much of the order of June 18, 1975, of the United States District Court for the Western District of New York, as denied their motion for a preliminary injunction.

Appellant, United Brotherhood of Carpenters and Joiners of America, hereinafter United Brotherhood, has taken this appeal from so much of the District Court's

order of June 18, 1975, as denied its motion to dismiss the complaint.

On April 30, 1975, appellants filed a verified complaint[1] against appellee in the United States District Court for the Western District of New York alleging six causes of action based on breach of the Constitution of the United Brotherhood of Carpenters and Joiners of America, violation of the bill of rights and trusteeship sections of the Labor Management Reporting and Disclosure Act of 1959, 29 USC 401 et seq., violation of the fiduciary responsibility section of that act, and violation of the due process clauses of the Fifth and Fourteenth Amendments to the United States Constitution.

On April 30, 1975, Local 72 obtained by a show cause order a temporary restraining order from the District Court prohibiting defendant United Brotherhood from proceeding in any way to implement a directive issued April 10, 1975, by William Sidell, General President of the United Brotherhood, which had called for the merger of a number of Rochester area locals of the United Brotherhood, among them, Local No. 72.

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[1] On the return day of the Order to Show Cause, Local 72 filed an amended complaint with additional affidavits. Without consenting to such a procedure, for the purposes of this appeal, no objection is taken.

Argument was heard on May 12, 1975, on Local 72's motion for a temporary injunction. The temporary restraining order was continued in effect until decision of the motion. Local 72's motion was denied June 18, 1975, on the grounds that appellants had failed to establish that they would be irreparably injured if an injunction did not issue.

Local 72 filed a Notice of Appeal on June 19, 1975, from the denial of their motion for a preliminary injunction.

On June 20, 1975, without prior notice to the United Brotherhood, Local 72 obtained from the District Court by order to show cause, a temporary injunction pending appeal pursuant to Rule 62 (c), Federal Rules of Civil Procedure, enjoining appellee from effectuating the merger pending hearing in the District Court on appellants' motion for a temporary injunction pending appeal.

On July 14, 1975, the District Court indicated that Local 72's application for an injunction pending appeal should be considered by this Court, denied appellants' motion for a temporary injunction pending appeal, and continued the stay in effect until appellants' motion could be heard by this Court.

On July 15, 1975, by order to show cause, this Court issued a stay of all proceedings pending appeal; and, on July 18, 1975, continued the stay and advanced the day for arguing the appeals to August 12, 1975.

Statement of Facts

(A103-108)

In response to numerous complaints received concerning dissension within the constituent locals of the Rochester, New York and Vicinity District Council of the United Brotherhood, dissension dating back as far as 1958, General President William Sidell ordered an investigation of the situation.

General Representative William Lawyer was assigned by John S. Rogers, member of the General Executive Board of the United Brotherhood, to meet with the Executive Boards of the Rochester locals and to listen to their complaints and proposed solutions. His investigation lasted about six weeks.

After receiving Mr. Lawyer's report, Mr. Rogers met on March 25, 1975, with the Executive Committee of the Rochester locals, and indicated that he intended to recommend some type of political restructuring that would de-emphasize the importance of the individual locals.

After receiving the reports of Mr. Lawyer and Mr. Rogers, Mr. Sidell outlined in a letter to Joseph J. Catalfano, Secretary of the Rochester and Vicinity District Council, dated April 10, 1975, the action to be taken to remedy the Rochester problem. (A52-54)

That letter, pursuant to Section 6-A of the Constitution and Laws of the United Brotherhood, as amended January 1, 1975, called for, inter alia, the following action effective May 1, 1975: (1) consolidation of local unions Nos. 240, 502, 72, 662 and 1508 into a new local; (2) consolidation of local unions nos. 2407, 231, 687 and 2255 into another new local; (3) a pro tem Executive Committee based on pro rata representation of the local unions pending an election to be held in two months; (4) the assignment of General Representative Lawyer "to guide the newly formulated Local Unions and offices for a reasonable period to insure that the policies and objectives of the United Brotherhood and newly formed Local Unions are implemented".

Questions Presented

1. Does the complaint fairly construed state a cause of action over which the courts of the United States have jurisdiction?

2. Have plaintiff-appellants established their right to a temporary restraining order by showing a clear probability of success on the merits of their claim together with the possibility of irreparable harm to them if an injunction does not issue?

Summary of Argument

The United Brotherhood submits that the recent decision of this Court in Head v. BRAC, ____ F2d _____ (March 7, 1975, Civ. 74-307) is dispositive of the questions presented on the appeal. It will be recalled that in Head, plaintiff-appellant argued that the proposed union restructuring and elimination of local lodges was contrary to the union constitution and thus violated Section 501 LMRDA (29 USC 501). This Court, consistent with its prior decisions in Gurton v. Arons, 339 F.2d 371 (1964) and Coleman v. Brotherhood of Railway and Steamship Clerks, 340 F2d 206 (1965) held that Section 501 (1) was confined to suits for fiscal mismanagement, and (2) did not permit the Courts to interfere with internal union matters when the "gravamen" of plaintiff's complaint was based on the contention that the union's political restructuring violated the union constitution.

While the instant complaint is more prolix, the

affidavits in support of Local 72's application for a temporary injunction show simply either (1) apprehension about money (Affidavit of August Virginia, A113-116), or (2) a supposed dilution of voting strength (Affidavit of Joseph San Filippo, A47) or (3) disagreement with the particular solution proposed by the United Brotherhood (Intraunion appeal of Robert Murphy and Joseph San Filippo, A55-56).

The District Court decision of Judge Curtin in Head v. BRAC, 378 F.Supp. 774 (WDNY 1974), observed that plaintiff's disagreement with the union's interpretation of the constitution was a matter best left to the internal union appeals procedure, and that absent a showing that the constitutional provisions were arbitrary or unreasonable the Court should not interfere. (Fritsch v. District Council No. 9, 493 F2d, 1061), (2d Cir. 1974).

Local 72's argument based on Rule 52, Federal Rules of Civil Procedure, is a late-found inspiration derived from a colloquoy on oral argument of the motion for a temporary restraining order held before this Court July 18, 1975. We submit that the opinion of Judge Frank in Orvis v. Higgins, 180 F2d 537 (2d Cir., 1950) and the more recent decision of this Court in English v. Town of Huntington, 448 F2d 319 (2d Cir. 1971) by Judge Friendly (whose comments upon the application of Rule 52 apparently

inspired this new ground) dispose of the Rule 52 argument.

- ARGUMENT -

Point I

APPELLANTS ARE NOT ENTITLED TO A TEMPORARY INJUNCTION BECAUSE THEY ARE NOT LIKELY TO SUCCEED ON THE MERITS OF THEIR CLAIM.

An applicant will not be granted the extraordinary remedy of a temporary injunction "except upon a clear showing of probable success and possible irreparable injury." Checker Motors Corp. v. Chrysler Corp., 405 F2d 319, 323 (2d Cir. 1969), cert. denied 394 U.S. 999 (1969); Clairol v. Gillette Co., 389 F2d 264, 265 (2d Cir. 1968); Societe Comptoir de l' Industrie, etc. v. Alexander's Department Stores, Inc., 299 F2d 33, 35 (2d Cir. 1962).

(A.) Appellants' first cause of action is not likely to succeed.

Appellants' first claim for relief alleges that the action ordered in the Sidell letter of April 10, 1975, constitutes a breach of the United Brotherhood's constitution and, as such, establishes jurisdiction over this suit in the District Court under Section 301 (a) of the Labor Management Relations Act of 1947, 29 USC Sec. 185 (a). The most that can be said on behalf of appellants' inter-

pretation of Section 6-A of the Union constitution is that the language of that section does not unambiguously refute their contention that an intraunion appeal must be finally determined before a merger can be effected. Appellee contends that its interpretation of Section 6-A as not requiring prior determination of an intraunion appeal is the more plausible of the two. Appellants cannot establish a clear probability of success on the merits of their first claim for relief.[2]

Furthermore, though not vital to this appeal, we argue that Local 72's first claim for relief does not establish jurisdiction under 29 USC, Section 185 (a). Appellants Local 72 rely on Parks v. International Brotherhood of Electrical Workers, 314 F2d 886 (4th Cir. 1963), cert. denied, 372 U.S. 976 (1963). In Smith v. United Mine Workers of America, 493 F2d 1241 (10th Cir. 1974), however, the United States Court of Appeals for the Tenth Circuit, correctly analyzed that case. It distinguished Parks on the grounds that the union constitution violation in dispute there, was directly connected to a collective bargaining agreement and directly affected the maintenance of industrial peace. The Smith opinion noted the reluctance of the Parks Court to involve itself in purely internal union matters, 493 F2d at 1243, and held that the federal courts should not interfere

[2] Local 72's new found argument that it has been denied its right to appeal is of recent vintage dating from its discovery of the case of Head v BRAC. When counsel for the United Brotherhood stated in open Court that Local 72's appeal was not being processed because of misgivings as to the scope of the injunctive decretal, and that it was willing to promptly proceed therewith (See Ex. A to this Brief) the offer was scoffed at by Counsel for Local 72 and indeed the District Court, on the ground that it would be futile and pointless.

in internal union affairs "which have no external application to industrial peace or to collective bargaining agreements". Id.

This Circuit has given limited endorsement to the Parks rationale. See Local 33, International Hod Carriers v. Mason Tenders District Council of Greater New York, 291 F2d 496 (2d Cir. 1961); Abrams v. Carrier Corporation, 434 F2d 1234 (2d Cir. 1970), cert. denied, sub nom. United Steelworkers of America v. Abrams, 401 U.S. 1009 (1971). Neither of those cases, however, bears resemblance to the instant case. In Hod Carriers, the dispute involved a parent organization and two separate but affiliated locals claiming jurisdiction over the same construction site. In Abrams, although jurisdiction under 29 USC Sec. 185 (a) was based on a local's charter from the International, the larger dispute involved the employer and other internationals which had signed a no-raiding agreement and a ruling on this point would not have disposed of the litigation.

Appellee submits that where, as here, the dispute involves only a local and its parent organization, and is in no way related to any collective bargaining agreement, or any immediate labor dispute, the local and parent should not be regarded as separate labor organizations for purposes of 29 USC 185 (a). Appellee relies on Smith v. UMW, supra.

Mr. Justice Frankfurter's copious dissent in Textile Workers v. Lincoln Mills, 353 US 448, at 462 (1957) while a minority view as to the substantive content of Section 301 in relation to collective bargaining agreements, is irrefutable to the issue here presented.

However "cloudy and confusing" be the legislative history of Section 301, and however robust the debate as to what light penetrates that murk, no one can point to so much as a fragment of that history that would reveal legislative intent to control intra union disputes.

Moreover, Federal Courts would not be enforcing Federal Law in this area, for there is lacking any issue of federal law calling for interpretation or application. Jurisdictionally speaking, this is a common, ordinary, run of the mill breach of contract, absent diversity of citizenship.

(B.) Appellants' second cause of action is not likely to succeed.

Appellants' second cause of action alleges that a trusteeship has been unlawfully imposed on Local 72. The requirements of compliance with Sections 302 and 303 (a) of the LMRDA (29 USC Sec. 462, 463 (a)) in imposing a trusteeship can only come into play of course if the United Brotherhood's proposed action constitutes a trusteeship. It does

not.

In Brewery Bottlers & Drivers Union Local 1345 v. International Brotherhood of Teamsters, 202 F. Supp. 464 (EDNY 1962) it was held that a merger of seven locals ordered by the International did not constitute a trusteeship under 29 USC Section 402 (h). See also Head v. BRAC, supra. Indeed, it would be an extraordinary exercise of judicial power to hold that a General President with authority to order a merger of local unions cannot appoint his representative "to guide the newly formulated local unions". To say that Mr. Lawyer's advisory role constitutes a trusteeship seems to us too far-fetched to warrant serious argument. (Sec. 3 (h), LMRDA).

Navarro v. Gannon, 385 F2d 512 (2d Cir. 1967), cert. denied, 390 US 989 (1968), cited by appellants, specifically reserved decision on whether an International Union's challenged acts constituted a trusteeship. It focused instead on alleged violations of Title I of the LMRDA.

In Parks v. International Brotherhood of Electrical Workers, 314 F2d 886, 924 (4th Cir. 1963), cert. denied, 372 US 976 (1963), also cited by appellants, the Court of Appeals affirmed a District Court finding that revocation of a local's charter did not constitute a trusteeship.

In Local No. 2 v. International Brotherhood of Telephone Workers, 261 F.Supp. 433 (D. Mass. 1966), a local's charter was revoked as a disciplinary measure for failure to follow a directive of the International, and a member of the International's Executive Council was placed in complete charge. Those are not the facts of this case.

(C.) Appellants' third cause of action is not likely to succeed.

Appellants have no cause of action under Section 501 LMRDA (29 USC Sec. 501). First, appellants have failed to comply with the requirements of Section 501 (b): requesting the union to bring suit, obtaining permission of the Court to proceed for cause shown. This failure alone is sufficient to defeat appellants' cause of action. Coleman v. Brotherhood of Railway and Steamship Clerks, 340 F2d 206 (2d Cir. 1965).

In addition, appellants have joined the wrong defendant for a Section 501 suit. The proper parties defendant in such suits are individual union officials alleged to have breached their fiduciary duties with respect to union money or property. In a footnote (N.1) to Head v. BRAC, _____ F2d _____ (2d Cir., March 7, 1975, Civ. 74-307), it was observed that the case would have been dismissed for failure to sue the proper party if it had not

been disposed of on other grounds.

The above jurisdictional requirements of Section 501 make it clear, too, that the type of suit involved here is not the type of suit for which Section 501 was intended.

The gravamen of appellants' complaint here, as in Head, is not misappropriation or mismanagement of funds, but rather a shift in the political, and thus financial, control of the Union to which appellants are opposed. Head declared emphatically that Section 501 would not become the jurisdictional vehicle for such suits in the Second Circuit, but would instead be read narrowly to cover only suits for fiscal mismanagement.

(D.) Appellants' fourth, fifth and sixth causes of action are not likely to succeed.

Appellants' fourth claim for relief alleges a violation of Section 101 (a) (1) LMRDA (29 USC Sec. 411 (a) (1))in that appellants' voting rights will be diluted if the proposed merger takes effect; that a vote of the local membership was not taken on the proposed merger; and, that a United Brotherhood representative was present at local meetings.

There is no jurisdiction over this action under Section 102 LMRDA (29 USC Sec. 412) because no violation of Section 101 (a) (1) LMRDA has been made out. That section was intended to prevent discrimination against individual members in re voting privileges. Where plaintiffs will have, individually, voting rights no different from those possessed by other members of the new local after the merger has been effected, they can prove no violation of Section 101 (a) (1). Calhoon v. Harvey, 379 U.S. 134 (1964). That section was not intended to cover every imaginable threat to the one man -- one vote model. See American Federation of Musicians v. Wittstein, 379 U.S. 171, 181 (1964); Fritsch v. District Council No. 9, 493 F2d 1061, 1063 (2d Cir. 1974); Schonfeld v. Raftery, 359 F. Supp. 380, 393 (SDNY 1973) aff'd. sub nom. Fritsch v. District Council No. 9, supra.

The union's constitution does not require that the membership of affected locals be polled before a merger pursuant to Section 6-A can be completed. That section merely guarantees a right of appeal from such action. Where such provisions do not discriminate against individual members so as to violate Section 101 (a) (1), the Courts will not interfere in internal union matters so long as it appears that the relevant constitutional provisions and the union's interpretation of them are neither arbitrary nor

unreasonable. Fritsch v. District Council No. 9, supra, at 1064; Gurton v. Arons, 339 F2d 371 (2d Cir. 1964); Schonfeld v. Raftery, supra, at 388. Appellee submits that the constitutional provisions in dispute here, and appellee's interpretation of them,cannot be considered arbitrary or unreasonable.

Appellee also submits that the presence of United Brotherhood representatives at local meetings does not infringe appellants' rights to free speech. The United Brotherhood's purpose in sending Mr. Lawyer and Mr. Rogers to meet with the locals was to solicit their complaints and recommendations before proposing any action to be taken. It was not, as was the case in Navarro v. Gannon, 385 F2d 512 (2d Cir. 1967, 390 US 989 (1968)) to pressure the locals to make a particular decision by having international representatives usurp the local officials' position at such meetings.

Appellants' fifth claim alleges that appellee has disciplined Local 72 without regard for the due process requirements of Sections 101 (a) (5) and 609 LMRDA (29 USC 411 (a) (5), 529). It is clear, however, that the action taken was intended to be remedial, not punitive. Appellants cite Local 853 v. United Brotherhood of Carpenters and Joiners of America (N.O.R.) 83 LRRM 2759 (D. N.J. 1972), aff'd. per curiam (3d Cir., June 22, 1973) but that case clearly holds

that a revocation of a local charter and order to merge with another local "were not 'discipline'" and "(t)herefore, no hearing was required by Section 101 (a) (5) before the revocation occurred." 83 LRRM at 2765.

In Pittman v. United Brotherhood of Carpenters and Joiners of America, 251 F.Supp. 323 (M.D. Fla. 1966), cited by appellants, plaintiffs were transferred to another already existing local after their own local's charter had been revoked, and were going to be treated as if they were new union members, i.e. they would not be allowed to vote for one year.

Finally, appellants' constitutional claims flow from their allegations in the first five claims for relief, and it is clear that these claims are without merit.

Point II

THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION IN DENYING APPELLANTS' MOTION FOR A PRELIMINARY INJUNCTION, AND THE LACK OF DETAILED FINDINGS OF FACT DOES NOT NECESSITATE A REMAND OF THIS APPEAL.

The order of a district court granting or denying an interlocutory injunction will be reversed only if it constitutes an abuse of discretion. United States v. Corrick, 298 US 435 (1936).

The decision below was based on a finding of no irreparable injury to appellants, a finding necessarily fatal to an application for a temporary injunction, cf. Checker Motors Corp. v. Chrysler Corp., supra.

Although the District Court did not make detailed findings of fact to support its conclusion that denial of the motion would not irreparably injure appellants, appellee contends that the evidence presented below adequately supports such a conclusion. (Affidavit of William Lawyer, A-106-108). See also the attached letter from William Sidell to Joseph J. Catalfano, dated July 29, 1975, regarding processing of the intraunion appeal (Exhibit A).

Findings of fact are not a jurisdictional requirement of appeal, but only aid appellate courts in reviewing the decision below. Rossiter v. Vogel, 148 F2d 292, 293 (2d Cir. 1945).

In Orvis v. Higgins, 180 F2d 537, (2d Cir. 1950) cert. denied, 340 US 810 (1950) Judge Frank observed:

> "Where a trial judge sits without a jury, the rule varies with the character of the evidence: (a) if he decides a fact issue on written evidence alone, we are as able as he to determine credibility, and so we may disregard his finding."

Accord Dropp v. Franklin National Bank, 461 F2d 873, (2d Cir. 1972).

It is clear that findings by the district court cannot add any useful insight to the record on appeal since such findings would be based on the same documentary evidence

which is before this court. In the past, this court has undertaken to render a decision on appeal from denial of an interlocutory injunction where a district court failed to comply with Rule 52 (a). English v. Town of Huntington, 448 F2d 319 (2d Cir. 1971). Appellee respectfully requests the court to do so again.

Conclusion

Appellants Local 72 are not entitled to a preliminary injunction as a matter of law because they cannot establish a clear probability of success on the merits of their claim and will not suffer irreparable injury if an injunction is denied.

The district court's decision is adequately supported by the evidence, and its failure to make detailed findings of fact does not require reversal or remand. Appellee United Brotherhood submits that this court can evaluate the evidence as well as could the district court and that a remand of this action will only occasion needless delay. Appellee requests the court to affirm so much of the order issued below as denied the application for a temporary injunction.

Appellant, the United Brotherhood of Carpenters, respectfully submits that the complaint and the amended complaint be dismissed.

Respectfully submitted,

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WILLIAM SIDELL
GENERAL PRESIDENT

UNITED BROTHERHOOD OF CARPENTERS
AND JOINERS OF AMERICA
101 CONSTITUTION AVE., N. W.
WASHINGTON, D. C. 20001

July 29, 1975

Mr. Joseph J. Catalfano, Secretary
Rochester and Vicinity District Council
58 North Fitzhugh Street
Rochester, New York 14614

Dear Sir and Brother:

By letter dated April 10, 1975 the Rochester and Vicinity District Council and all of its affiliated Local Unions were advised that I had determined and directed that the District Council be dissolved and that certain consolidations take place among its affiliated Local Unions. A copy of that directive is attached hereto.

By letters dated April 18, 1975 (received at the General Office on April 29, 1975) and April 24, 1975 (received at the General Office on May 1, 1975), Local Union 72 appealed to the General Executive Board and the General President from the April 10, 1975 directive and requested a hearing with respect to several objections raised in the appeals.

Because of certain legal proceedings instituted by Local Union 72 on April 30, 1975, no action was taken with respect to the appeals and request for hearing.

The April 10, 1975 directive was based on Section 6 A of the Constitution and Laws of the United Brotherhood.

Section 6 A grants discretion to me, as General President, where I find it to be in the best interests of the United Brotherhood and its members, to dissolve or consolidate District Councils or Local Unions. Such action is appealable to the General Executive Board and Section 6 A further provides that hearings may be held in appropriate cases.

In view of the appeals filed by Local Union 72, I find it appropriate to hold a hearing with respect to this matter.

EXHIBIT "A"

Accordingly, I have appointed a Committee consisting of Second General Vice President Patrick J. Campbell, Chairman, and General Executive Board Members Leon W. Greene, 5th District, and William Stefanovitch, 9th District, to conduct such hearings.

The hearings will be held at the Flagship Rochester Hotel commencing at 10:00 a.m. on Tuesday, September 9, 1975. Hearings will continue on September 10, 1975 and as determined to be necessary by the Committee. Evening sessions will be scheduled in the discretion of the Committee.

It will be the function of the Committee to inquire into all matters relating to my directive of April 10, 1975 and the appeals of Local Union 72, to the nominations and election held in the District Council in May and June, 1975 and any and all matters pertinent to the proposed dissolution of the District Council and consolidations of Local Unions in the area.

The Committee will submit a full report of its findings, conclusions and recommendations for review and consideration by the General Executive Board in determining the appeals.

Officers and members of the District Council and its affiliated Local Unions and others having knowledge pertinent to the inquiry may appear or be called before the Committee to give testimony or other evidence.

Fraternally yours,

William Sidell

GENERAL PRESIDENT

WS:md

cc: Local Unions 72, 231, 240, 502, 662, 687, 1163, 1508, 2255-S, 2407
Patrick J. Campbell
Leon W. Greene
William Stefanovitch
John S. Rogers
William Lawyer
Samuel Ruggiano
Thomas McMahon, Esq.

April 10, 1975

Mr. Joseph J. Catalfano, Secretary
Rochester & Vicinity District Council
58 North Fitzhugh Street
Rochester, New York 14614

Dear Sir and Brother:

As you are aware, there have been numerous problems in the Rochester and Vicinity District Council area over the years and General Office records reveal that, on certain occasions, it has become necessary to supervise the District Council activities. The files of the General Office and the First District Office are replete with correspondence from officers, representatives and individual members illustrating their concern over the situation in the area.

General Representative William Lawyer was assigned to make a complete and detailed investigation of the conditions within the District Council area.

The purpose of the investigation was to get firsthand knowledge of the situation and to further give each group an opportunity to recommend what they consider to be an appropriate solution. I have reviewed the files and reports on this matter and find the problems and dissension which existed over the years are continuing today.

Therefore, I assigned General Executive Board Member John S. Rogers to meet with the District Council delegates and the Executive Committees of affiliated Local Unions. At that meeting each individual was given an opportunity to address the chair and set forth their recommendations as to what would, in their judgment, be the solution.

It was apparent that the problems of the past and present stem from the basic structure of the District Council, and, therefore, pursuant to Section 6 A of the Constitution and Laws of the United Brotherhood, I have determined and direct:

That the Rochester & Vicinity District Council be dissolved.

That Local Unions 240, 502, 72, 662 and 1508 be consolidated under a new charter to be issued to include the construction

membership of these local unions. Further, Local Unions 2407, 231, 687 and 2255 shall be consolidated and a new charter issued.

The "outside" carpenters presently members of Local 231 shall be transferred to the newly chartered carpenter local which would be comprised of the membership of Local Unions 240, 502, 72, 662 and 1508.

Local Union 2407 (soft floor), Local Union 231 (mill and cabinet) and Local Unions 687 and 2255 (industrial) have sufficient members to employ a fulltime representative to service the membership and organize.

The consolidations shall be effective May 1, 1975, and in the interim each of the Local Unions shall, in accordance with their membership, have pro rata representation on a pro tem Executive Committee which shall function for a period of approximately two months, after which a duly called election pursuant to the Constitution and Laws, with appropriate dispensation, shall be conducted, electing officers and business representatives initially for a two-year term and thereafter for a term of three years.

In the interim the present three fulltime officials currently employed by the District Council shall be assigned as business representatives to the newly chartered carpenter Local Union and serve under the direction of General Representative William Lawyer until the election is held.

The Local Union shall elect one business manager and two assistant business representatives. The current employment of an organizer should temporarily be discontinued until such time as the new Executive Committee and business representatives are elected, at which time the business manager should appoint such personnel.

The newly chartered carpenter Local Union shall have a general Business Representative-Financial Secretary, and sufficient clerical help shall be employed to work under his direction.

General Representative Lawyer is assigned to guide the newly formulated Local Unions and officers for a reasonable period to insure that the policies and objectives of the United Brotherhood and newly formed Local Unions are implemented.

Fraternally yours,

GENERAL PRESIDENT

WS:md
cc: Local Unions 72, 231, 240, 502, 662, 687, 1163, 1508, 2255-S, 2407
John S. Rogers
William Lawyer

Affidavit of Service

Monroe County's
Business/Legal Daily Newspaper
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(716) 232-6920

Johnson D. Hay/Publisher
Russell D. Hay/Board Chairman

The Daily Record

August 4, 1975

Re: Joseph A. San Filippo et al vs United Brotherhood of Carpenters and Joiners of America

State of New York)
County of Monroe) ss.:
City of Rochester)

Johnson D. Hay

Being duly sworn, deposes and says: That he is associated with The Daily Record Corporation of Rochester, New York, and is over twenty-one years of age.

That at the request of

Thomas P. McMahon, Esq.

Attorney(s) for

Appellant

(s)he personally served three (3) copies of the printed ☐ Record ☒ Brief ☐ Appendix of the above entitled case addressed to

Goldstein, Goldman, Kessler & Underberg
1800 Lincoln First Tower
Rochester, NY 14604

☐ By depositing true copies of the same securely wrapped in a postpaid wrapper in a Post Office maintained by the United States Government in the City of Rochester, New York.

☒ By hand delivery

.....John D. Hay.....

Sworn to before me this 4th day of August, 1975

.....Elizabeth A. O'Connor.....

Notary Public
Commissioner of Deeds